

# Court of Claims of Ohio

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MARK FERREIRA

Plaintiff

v.

OHIO ATTORNEY GENERAL'S  
OFFICE, et al.

Defendants

Case No. 2006-04245

Judge Joseph T. Clark  
Magistrate Matthew C. Rambo

## MAGISTRATE DECISION

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{¶1} On May 14, 2007, defendants filed a motion for summary judgment. On June 25, 2007, plaintiff filed a response. On June 26, 2007, an oral hearing was held at the North Central Correctional Institution on defendants' motion.

{¶2} Civ.R. 56(C) states, in part, as follows:

{¶3} “\*\*\* Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor. \*\*\*” See, also, *Gilbert v. Summit County*, 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶4} Plaintiff filed this case alleging breach of contract. Plaintiff claims that his plea agreement with the Lucas County prosecutor was not honored in that he was denied drug treatment at the Corrections Treatment Facility.

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{¶5} Plaintiff filed his original complaint on June 26, 2006, naming the Lucas County Prosecutor's Office, Lucas County Assistant Prosecutor Andrew Lastra, and Thomas Tomczak, plaintiff's court appointed attorney, as defendants. On June 29, 2007, the court dismissed the above defendants and ordered plaintiff to file an amended complaint naming a state department, board, office, commission, agency, institution or other state instrumentality as defendant. On July 17, 2006, plaintiff filed an amended complaint naming the Ohio Attorney General's Office and the Ohio Public Defender's Office as defendants.

{¶6} Attached to defendants' motion for summary judgment is the affidavit of M. Kathryn Smith, the administration counsel for the Ohio Public Defender. She asserts therein that, upon reviewing the pertinent records, she determined that plaintiff is neither currently, nor was he in the past, a client of the Ohio Public Defender's Office. In addition, plaintiff has cited no case law, statute, or rule that would subject the Ohio Attorney General to liability for the alleged breach of the plea agreement with the county prosecutor.

{¶7} Based upon the foregoing, the court finds that neither the Ohio Attorney General's Office nor the Ohio Public Defender's Office is a proper defendant in this case and that these parties are entitled to judgment as a matter of law. Accordingly, it is recommended that defendants' motion for summary judgment be GRANTED and that judgment be rendered in favor of defendants.

*A party may file written objections to the magistrate's decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law*

[Cite as *Ferreira v. Ohio Atty. Gen.*, 2007-Ohio-4146.]

*under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).*

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MATTHEW C. RAMBO  
Magistrate

cc:

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| MR/cmd   |  |

Filed July 26, 2007

To S.C. reporter August 15, 2007